

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
OSNET Wireless, Corp.)	File No: EB-FIELDSCR-19-00030378
San Juan, Puerto Rico)	NAL/Acct. No: 202032020008
)	FRN: 0021999305
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 26, 2020

Released: October 26, 2020

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. Protecting spectrum licensees from harmful interference sits at the core of the Commission’s congressional mandate. For this reason, the Commission’s rules set forth specific technical requirements for spectrum use, whether on a licensed or an unlicensed basis. The Commission takes a dim view of operators in unlicensed bands who modify their devices to operate in neighboring bands that require a license. In such circumstances, enforcement action by the Commission is appropriate.

2. In this case, we find that OSNET Wireless, Corp. (OSNET), apparently violated section 301 of the Communications Act of 1934, as amended (Act) and sections 15.1(b) and 15.205 of the Commission’s rules by modifying network equipment to operate in restricted portions of the 2300 MHz band, where a Commission license is required, and then operating that network equipment without such a license. We therefore propose a monetary forfeiture of \$20,000 against OSNET for these apparent violations of the Act and the Commission’s rules.

II. BACKGROUND

3. *Legal Framework.* Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States or its territories without a license granted by the Commission.¹ Part 15 of the Commission’s rules provides an exception to this general license requirement and sets forth conditions under which devices (intentional radiators) may operate without an individual license.² Pursuant to section 15.1(b) of the Commission’s rules, however, “operation of an intentional . . . radiator that is not in accordance with the regulations in this part must be licensed. . . .”³ Section 15.205 of the Commission’s rules provides that certain frequency ranges, including 2310 – 2390 MHz are restricted and therefore ineligible for use by intentional radiators under the Commission’s part 15 rules.⁴

4. *Factual Background.* On December 11, 2019, a wireless carrier licensed to operate in the Wireless Communications Service (WCS) in Puerto Rico, submitted a complaint that a device operating

¹ 47 U.S.C. § 301.

² See 47 CFR §§ 15.1, *et seq.*

³ 47 CFR § 15.1(b). An “intentional radiator” is defined as “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 CFR § 15.3(o).

⁴ 47 CFR § 15.205(a).

from the roof of a commercial building located at 110 Calle Luis Muñoz Rivera, Cayey, Puerto Rico (Transmitter Site) was causing interference to the carrier's operations in the 2300 MHz WCS band and that it believed that OSNET was the entity operating the device.⁵ The following day, personnel from the Commission's Enforcement Bureau (Bureau) used direction-finding techniques and confirmed that a device was operating on 2307-2327 MHz from the roof of the Transmitter Site. Bureau personnel then traveled to OSNET's corporate offices, where a representative of the company confirmed that it operated two Ubiquiti Rocket M2 devices (together, the Ubiquiti Devices), both of which are intentional radiators. At the request of Bureau personnel, the OSNET representative used an online tool to access the configurations of the Ubiquiti Devices. Bureau personnel then observed that both Ubiquiti Devices were configured to operate between 2307-2327 MHz and that both were configured to operate with the "Licensed" country code (rather than the United States country code). Bureau personnel also observed that one Ubiquiti Device at a distant site operated as an access point, while the other Ubiquiti Device, located at the Transmitter Site, was configured to operate as a station (or client) of the distant Ubiquiti Device access point. An OSNET representative confirmed that OSNET provides wireless broadband Internet service to a customer located at the Transmitter Site.

5. After Bureau personnel explained to OSNET's representative that the Ubiquiti Devices were operating in a restricted band, the company's representative changed the configuration of both devices so that their country codes were properly set to the United States and so that both operated with a center frequency of 2457 MHz with a bandwidth of 20 MHz, which is permitted for unlicensed operations. Bureau personnel then contacted the wireless carrier, which confirmed that it was no longer experiencing interference to its WCS facilities near the Transmitter Site.

III. DISCUSSION

6. We find that OSNET has apparently willfully violated section 301 of the Act and has also apparently violated sections 15.1(b) and 15.205 of the Commission's rules.⁶ Specifically, on December 12, 2019, Bureau personnel observed that OSNET was operating the two Ubiquiti Devices on 2307-2327 MHz, which falls within the restricted band identified in section 15.205 of the Commission's rules.⁷ As such, OSNET did not satisfy the section 15.1(b) condition for unlicensed operation—namely, that devices must be operated in accordance with the applicable provisions of part 15 of the Commission's rules (here, section 15.205).⁸ Accordingly, because OSNET holds no license from the Commission permitting operation within the restricted 2310-2390 MHz band, we find that its operation of the two Ubiquiti Devices apparently violated section 301 of the Act and sections 15.1(b) and 15.205 of the Commission's rules.⁹

7. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."¹⁰ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against OSNET of up to \$20,489 for each day of a continuing violation, up to a statutory maximum of \$153,669 for a single act or failure to act.¹¹ In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as

⁵ See Complaint, FCC File No. ESIX000036 (Dec. 11, 2019) (on file in EB-FIELDSCR-19-00030378).

⁶ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.205(a).

⁷ 47 CFR § 15.205(a).

⁸ 47 CFR §§ 15.1(b); 15.205.

⁹ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.205.

¹⁰ 47 U.S.C. § 503(b).

¹¹ See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(8). *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

justice may require.”¹² In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹³ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁴

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Commission’s rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁵ On December 12, 2019, OSNET apparently operated the two Ubiquiti Devices within the 2310-2390 MHz restricted band set forth in section 15.205 of the Commission’s rules without a license, which is required when operating outside of the parameters set forth in part 15 of the Commission’s rules.¹⁶ Accordingly, we find that OSNET’s conduct resulted in two separate apparent violations of section 301 of the Act and sections 15.1(b) and 15.205 of the Commission’s rules, yielding an aggregate base forfeiture of \$20,000.¹⁷ Taking the statutory factors and applicable precedents into account, we conclude that neither an upward nor a downward adjustment is appropriate here.¹⁸ We therefore propose an aggregate forfeiture of \$20,000 for OSNET’s apparent violations of section 301 of the Act and sections 15.1(b) and 15.205 of the Commission’s rules.

IV. CONCLUSION

9. We have determined that OSNET apparently willfully violated section 301 of the Act and sections 15.1(b) and 15.205 of the Commission’s rules.¹⁹ As such, OSNET is apparently liable for a forfeiture of \$20,000.²⁰

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²¹ and sections 1.80 of the Commission’s rules,²² OSNET Wireless, Corp. is hereby **NOTIFIED** of this **APPARENT**

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 CFR § 1.80(b)(9), Note to paragraph (b)(8).

¹⁴ *Id.*

¹⁵ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b).

¹⁶ 47 CFR § 15.205(a).

¹⁷ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.205(a). *See, e.g., Caribbean Network Solutions, Inc., Bayamon, Puerto Rico*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 3643, 3646, para. 9 (EB 2019) (*Caribbean Network*), *forfeiture ordered*, 34 FCC Rcd 10450 (EB 2019).

¹⁸ 47 U.S.C. § 503(b)(2)(E). *See, e.g., Caribbean Network*, 34 FCC Rcd at 3646, para. 10, *citing Towerstream Corporation, Middletown, Rhode Island*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 11604, 11613, para. 28 (2013) and *DirectLink, LLC, Parker, Colorado*, Memorandum Opinion and Order, 30 FCC Rcd 2222, 2223–24, para. 4.

¹⁹ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.205(a).

²⁰ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

²¹ 47 U.S.C. § 503(b).

²² 47 CFR § 1.80.

LIABILITY FOR A FORFEITURE in the amount of Twenty Thousand Dollars (\$20,000) for willful violations of section 301 of the Act²³ and sections 15.1.(b) and 15.205 of the Commission's rules.²⁴

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,²⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, OSMET Wireless, Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 14 below.

12. OSMET Wireless, Corp. shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov and matthew.gibson@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁶ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number

²³ 47 U.S.C. § 301.

²⁴ 47 CFR §§ 15.1(b), 15.205(a).

²⁵ 47 CFR § 1.80.

²⁶ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.³⁰ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to field@fcc.gov and matthew.gibson@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.³¹ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³²

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to OSNET Wireless, Corp., Urb. Gomez #3, Humacao, PR, 00792-2851.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director, Region Two
Enforcement Bureau

²⁹ See 47 CFR § 1.1914.

³⁰ 47 CFR §§ 1.16, 1.80(f)(3).

³¹ 47 U.S.C. § 503(b)(2)(E).

³² See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).